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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,871	01/28/2000	Christopher Evans	11714-P02	2773

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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 07/25/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/493,871
Filing Date: January 28, 2000
Appellant(s): EVANS ET AL.

Jerry Cohen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 25 May 2005.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-7 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

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4,720,095	SOWARDS	01-1988
5,957,789	AINSCOUGH ET AL.	09-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (4,147,353) in view of Sowards (4,720,095) and Ainscough et al (5,957,789).

Regarding claims 7-10, Moore shows an apparatus for holding a soccer ball, comprising: a tie down stake (tent stake 1) having a lower portion and a circular-shaped upper portion (see figure 1); a ring (S-shaped metal hook 2) on the circular-shaped upper portion, wherein the ring (2) is able to travel along a substantial portion of the circular-shaped upper portion; means for (straps 6) securing a soccer ball (8) in a minimally interfering way with kicking, the securing means comprising straps (6a, 6b, 6c, and 6d) for holding the ball (8) tied to a tether line, wherein the tether line has one section which is elastic (elongated elastic shock cord 4) and attached to the swivel connection (brass swivel 3), and another section that is inelastic (braided nylon cord 5) and attached to the securing means (straps 6), the tether line being tied at its ends to and extending between the ring (S-shaped metal hook 2) and the means for securing (straps 6; best seen in figure 10); and means for enabling the tether line to rotate about its own axis (brass swivel 3). Moore does not expressly disclose the use of 1) a spiraled stake with a handle, 2) a netted bag and 3) a removable swivel connection as disclosed by applicant.

Sowards shows an apparatus for holding a soccer ball (110), wherein the stake is a tie down stake (anchor 112) having a spiraled lower portion (helically wound lower portion 114); a circular-shaped upper portion (loop 118); and a handle under the circular-shaped upper portion

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(handle portion 120) that is projecting from the tie-down stake (112), wherein the handle projects from the stake and is constructed and arranged for seating at ground level when the spiraled lower portion of the stake is fully inserted into the ground (see figure 10); a ring (link 128) on the circular-shaped (118) upper portion, wherein the ring (128) is able to travel along a substantial portion of the circular-shaped (118) upper portion and the ball (110) being attached directly to the ring (128). See figure 10. Sowards additionally shows an alternative means of anchoring the training device to the ground (see figure 8), wherein the stake is substantially the same as the stake of Moore. In view of Sowards, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a spiraled-type stake with a handle for the apparatus of Moore, the motivation being, it would retain the tethered-ball to the ground more securely.

It should be noted that the S-shaped hook (2) of Moore's device is removably attached to the stake and the swivel (3). Nevertheless for the sake of argument, Ainscough et al shows a soccer training device, having a ball (12), a tether (inelastic cord 16), a detachable link (swivel connector 20) attached to an upright (support pipe 46), (column 2, lines 51-64 and column 3, lines 30-41), wherein the upright (46) is shown to be secured to the ground (59) in several different ways, and wherein the means for securing the ball is a net (containment device 14) so that a substantial portion of the surface of the ball is exposed, see figures 1, 4 and 5. In view of Ainscough, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a removable swivel-eye bolt for the device of Moore, the motivation being, in order to provide an efficient connection and additionally, for allowing the ball to freely rotate 360 degrees without the cord winding upon itself; and it would have further

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been obvious to have also provided a net similar to the one shown by Ainscough for the modified device of Moore, so that the ball is able to move more freely within its confines creating a more realistic practice session.

Regarding claim 11, note the rejection of claims 7-10.

(11) *Response to Argument*

Acknowledgement is made of the Declaration(s) filed 05 June 2002, 14 October 2003, 15 June 2004 and 22 February 2005. However, as stated before the declaration(s) is insufficient to overcome the rejection of claims 7-11. The affidavit fails to overcome the prima facie case established by the applied prior art. The affidavit has failed to overcome the prima facie case of obviousness. There is nothing unobvious about utilizing a different shape stake, especially since it is well known in the art to do so, depending on the intended use (i.e. the ground surface the sport equipment is being used on).

With regards to Appellant's remarks that the prior art of record references (Moore, Sowards and Ainscough) fail to teach the use of various types of stakes including spiraled stakes. Appellant's arguments are not understood, since such is clearly shown in the figures. The Moore reference shows a soccer practice device that has a strong ground-connection. As appellant is well aware, numerous means are well known for securing a tethered ball to the ground surface. Both Ainscough et al and Sowards show this. Sowards in figure 10 substantially shows the same ground-securing means as claimed by appellant. In addition to its figure 10, Sowards shows other anchoring means. Sowards in figure 8 shows an alternative anchor which is substantially identical to the Moore anchor. One of ordinary skill in the art would have recognized that different anchoring means should be utilized for different substrates.

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With regards to Appellant's remarks that the prior art of record references (Moore, Sowards and Ainscough) fail to teach the use of a net as the means for securing the ball. Moore shows the use of straps, Sowards shows the ball being either directly attached or via a strap and Ainscough et al utilizes a netted bag to retain a soccer ball. The Butterfield (GB 2,302,032 A) reference is of record, but was not used in the rejection of the claims also shows securing a soccer ball to a tether either directly or by using a netted bag. Therefore, as can be seen the use of netted bags are well known in the soccer practice and training art.

With regards to Appellant's remarks that the prior art of record references (Moore, Sowards and Ainscough) fail to teach the use of removable swivel connection. Moore shows a swivel (3) which is removably attached to the S-shaped ring (2). As indicated above all parts are capable of being removed or detached. Nevertheless, the claim was interpreted narrower than has been claimed and the Ainscough et al reference was further used to show a removable swivel.

With respect to providing a realistic ball motion and true 360-degree range of kicking ability with minimal interference, this is not only shown by Moore but also thought by Ainscough et al (column 1, lines 44-52).

For the above reasons, it is believed that the rejections should be sustained.

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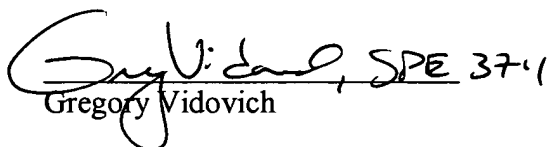
Respectfully submitted,


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19 July 2005

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